

Office of the
Information and
Privacy Commissioner

Alberta

1998 – 99 **Annual Report**



The Purposes of the Freedom of Information and Protection of Privacy Act

The purposes of the *Freedom of Information and Protection of Privacy Act* according to section 2 of the Act are:

- a) to allow any person a right of access to the records in the custody or under the control of a public body subject to limited and specific exceptions as set out in the Act,
- b) to control the manner in which a public body may collect personal information from individuals, to control the use that a public body may make of that information and to control the disclosure by a public body of that information,
- c) to allow individuals, subject to limited and specific exceptions as set out in the Act, a right of access to personal information about themselves that is held by a public body,
- d) to allow individuals a right to request corrections to personal information about themselves that is held by a public body, and
- e) to provide for independent reviews of decisions made by public bodies under this Act and the resolution of complaints under this Act.

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November 17, 1999

Honourable Ken Kowalski
Speaker of the Legislative Assembly
325 Legislature Building
10800 - 97 Avenue
Edmonton, Alberta
T5K 2B6


Dear Mr. Speaker:

I am pleased to submit to you the Annual Report of the Office of the Information and Privacy Commissioner, covering the period from April 1, 1998 to March 31, 1999.

This report is submitted under section 61(1) of the *Freedom of Information and Protection of Privacy Act*, Chapter F-18.5 of the 1994 Statutes of Alberta.

Yours truly,

Robert C. Clark
Information and Privacy Commissioner



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Commissioner's Message

"Widespread information access and the ability to put a lot of information onto smart cards will cause societies to revisit the question of how information can be used."

Bill Gates, 1999

The above quotation by Microsoft Chairman and CEO Bill Gates, from his book *Business @ The Speed Of Thought*, may become more telling as we enter the dawn of the 21st century. Technologies developed by Microsoft and other companies are increasing the ease at which information may be gathered and disseminated, at a speed faster than privacy protection can keep up. Smart cards, in particular, are a convenience-bearing tool designed to monitor and record our identity. This brings us to the question: How do we balance society's thirst for information with the right of an individual to protect one's privacy?

Technology is not the problem. Technological advances continue to develop on an almost weekly basis, with computer chips becoming smaller and more powerful, resulting in greater storage and faster retrieval of information. Technology is a tool, a neutral instrument, and a means to an indefinable end. The answer to privacy protection lies with society and how much access to personal information we deem is too much.

I believe there will be seven key factors affecting information and privacy in the future: demographics, politics, ethics, business, education, leisure and government. This will result in Albertans demanding more complex decisions, people becoming more sensitive to privacy and information transgressions, people expecting faster and more protective legislation, and people becoming more defensive about rights.

Albertans are increasingly becoming savvy when it comes to accessing information from government bodies. Conversely, many organizations and groups are coveting the personal information of Albertans.

The Act...

The *Freedom of Information and Protection of Privacy Act* (the "Act") came into force in 1995. Since that time, Albertans have accessed government-held information at an increasing rate, while public bodies continued to grow more accustomed to maintaining transparency and accessibility to information. This is a positive process, but one that continually needs to grow. The Alberta Legislature has the ability to authorize collection, use and disclosure of personal information, as it has the power to amend the Act. It must be kept in mind that just because it has the power to do this does not mean that policy makers adhere to "fair information practices." Albertans should be guided by the following "fair information practices," which are common guidelines based on the Organization for Economic Cooperation and Development (OECD) principles:

Openness: There should be open discussion about what personal information is to be collected.

Purpose: Why is the personal information being collected?

Collection: How is the personal information being collected? It should be obtained lawfully and fairly and with the knowledge and consent of the subject. Only that information necessary for the stated purpose should be collected, nothing more.

Use: Who gets to share this personal information? It should not be revealed to others without the consent of the subject or without legal authorization.

Individual Participation: Everyone should get to inspect and correct his or her personal information.

Quality: Personal information should be accurate, complete, timely, and relevant to the purposes for which it is to be used. Whenever possible, personal information should be collected directly from the individual.

Security: There needs to be reasonable security safeguards against risks such as loss, unauthorized access, destruction, or alteration. Only those with a need to know should have access.

Accountability: Who is accountable for applying these principles? The higher up that person is in the organization, the better. Privacy audits to ensure compliance must be conducted regularly, as should employee-training programs.

It is important Albertans rethink the impact past regulations have had, and how these regulations may circumvent the Legislative Assembly. I would like to commend the Alberta Legislature for its support in ensuring the implementation of the Act to the entire public sector before 2000. Post-secondary institutions, municipalities and hospitals will be covered by the Act by October 1, 1999. My office will use our experience and judgment to ensure a smooth transition in incorporating transparency and protection of personal information into these local public bodies.

Legislative Review

In our continuing effort to monitor government programs and initiatives, my office has offered comment on a number of initiatives affecting privacy. First of all, I would like to commend the Legislative Assembly for completing the mandated three-year review of the Act, the first successful review of its kind in Canada. In September 1998, I made my submission to the Select Special Committee reviewing the Act. I urged the Legislature not to amend the Act to cover every possible situation, but allow my office the flexibility to address each circumstance by applying the previously noted fair information practices and common sense. I also recommended the Government of Alberta consider introducing legislation to protect the privacy rights of Albertans in the private sector. Quebec is the only province in Canada to pass legislation protecting its citizens' personal information in the private sector.

In November 1998, I also discussed with the Select Special Committee the federal privacy legislation, Bill C-54. The Bill is currently being reintroduced as Bill C-6 in the House of Commons and will cover the federally-regulated private sector. The Bill's future remains to be seen.

Alberta Registries

Alberta Registries continued its review and implementation of the 21 recommendations outlined in the 1998 audit report, that was jointly conducted by our office and the Office of the Auditor General. Alberta Registries proceeded immediately with 16 of the 21 recommendations. Work continues on other recommendations, such as development of publications for the public and communicating Alberta Registries' purpose and authority for collection of personal information. The collection of personal information for the Motor Vehicles Registry is subject to the Act; however, the use and disclosure of that personal information is not subject to the provisions of the Act. I am pleased that Alberta Registries has chosen to comply with the spirit and intent of the Act in its handling of personal information in the Motor Vehicles Registry. My office will continue to monitor its progress and comment next year.

Public Awareness

My office continued to promote awareness of individual privacy protection and privacy issues to the public over the past year. I regard informing the public about privacy protection, in particular, a very important role for our office. Our priority continued to be the education of young Albertans, who are increasingly becoming targets of marketing firms and advertising agencies and who need to be armed with greater knowledge of their privacy rights. We have conducted privacy awareness seminars at several Alberta high schools, as well as educated students on information and privacy issues at Grant

MacEwan College and Mount Royal College. In the coming year, we will increase the number of privacy awareness seminars for students throughout the province.

Looking Ahead...

I anticipate that health information will be one of the most significant and controversial privacy issues in the coming year. I hope the Department of Health and Wellness will remember the previously mentioned “fair information practices” when introducing the *Health Information Act*.

I believe it is important to emphasize that privacy is the major issue facing our office. The access to information and privacy process of the Act is working well, while protection of privacy is becoming more challenging. Privacy, in my view, revolves around human dignity and respect, freedom from interference or intrusion and preserving personal autonomy. It is what allows us to be creative, to think, to love, to dream. It is fundamental to self-determination: you decide who sees you and when. You decide what others know about you.

Much of the work our office conducts could not have been accomplished had it not been for the work of my staff. The success of our office can directly be attributed to the continued hard work of a team of people who face many new challenges with enthusiasm and innovation. To Director Frank Work, our Portfolio Officers, legal and support staff, I once again say thanks.

In Memoriam: Robert Peter Gillis, 1946 – 1999

In February 1999, the world of access and privacy law lost a strong contributor when consultant Peter Gillis passed away in the prime of his career. Peter initially was invited to Alberta to assist the provincial government FOIP coordinators prepare for the coming into force of the Act. Albertans benefited greatly when he took up residence here and dedicated his professional services to making the implementation of the Act a success. Peter will long be remembered as a friend of this Office and as a sound counselor with a special talent for making the principles of the Act come to life in policy writing, in professional training, and ultimately in good law-making. Peter's influence set a positive tone to assist Albertans through a challenging set of changes, and his work will live on as testament to his wisdom and foresight. I am honoured to have been associated with Peter during the Alberta stage of his remarkable career of public service to the people of Canada.

Introduction

Background

The Alberta *Freedom of Information and Protection of Privacy Act* (the Act) received Royal Assent on June 1, 1994, although most of the Act did not come into force until October 1, 1995.

Robert C. Clark was appointed as the province's first Information and Privacy Commissioner on June 1, 1995. Mr. Clark was re-appointed to this position on June 2, 1997, for a five-year term.

The Director and General Counsel for the Office of the Information and Privacy Commissioner (IPC) was hired on June 15, 1995, and IPC was staffed by September 1995. The decision was made early on to employ only a core group of resourceful and skilled people to respond to both policy initiatives and individual requests and complaints. Where specialized expertise was needed, it would be acquired by contract.

IPC presently shares office space and some staff functions with the Office of the Ethics Commissioner. This has resulted in cost savings to both offices. However, it is emphasized that IPC and Ethics functions are otherwise kept strictly separate, and confidentiality in Ethics matters is strictly and completely preserved.

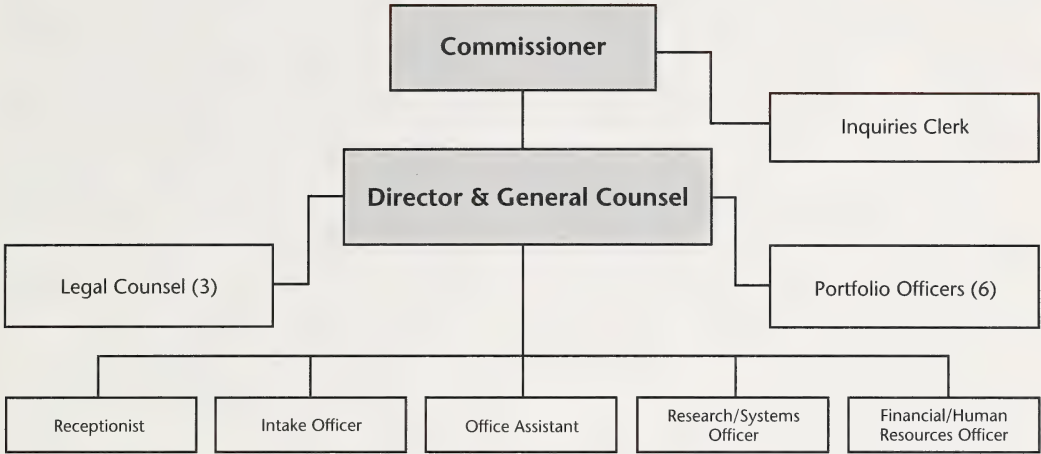
In 1998, with the phasing in of local public bodies under the Act (i.e., schools, academic institutions, hospitals and municipalities), IPC hired two more Portfolio Officers. The staffing strategy of IPC has been to hire individuals with adaptable skills and extensive experience in areas that are particularly relevant to access and privacy issues. In so doing, the organization has created a broad base of knowledge, which can be drawn upon in order to enforce the Act and assist Albertans with any concerns they have in this area.

Mandate

Under the Act, the Commissioner is responsible for performing a broad range of functions. Section 51 is not exhaustive, but sets out a number of these responsibilities:

- conduct investigations to ensure compliance with a provision of the Act or compliance with rules relating to the destruction of records set out in:
 - (a) any other enactment of Alberta, or
 - (b) a by-law or other legal instrument by which a local public body acts,
- make an order requiring that a duty imposed by the Act be performed, whether or not a review is requested,
- inform the public about the Act,
- receive comments from the public concerning the administration of the Act,
- comment on the implications for freedom of information and protection of personal privacy resulting from proposed legislative schemes or programs of public bodies,
- comment on the implications for protection of personal privacy resulting from using or disclosing personal information for record linkage,
- authorize the collection of personal information from sources, other than from the individual about whom the information relates,
- bring to the attention of the head of a public body any failure to meet the prescribed standards for fulfilling the duty to assist applicants, and
- give advice and recommendations of general application to the head of a public body on matters respecting the rights or obligations of a head under the Act.

IPC Staff



IPC Timeline

The objectives of the office for 1998 were to:

- prepare for local public bodies coming under the Act.
- continue to deal with requests for review in a timely way.
- continue to monitor access and privacy implications of legislative schemes and programs.
- review data sharing agreements between various provincial departments.
- participate in the “paramountcy” review of the Act required by section 5.
- complete and report on its first privacy compliance audit.
- participate extensively in the development of a health care information system for Alberta.
- continue assisting the new Information and Privacy Commissioners from the Yukon and Northwest Territories.
- fund and support the preparation of an annotated version of the Act.
- deal with requests for review of decisions of local public bodies.
- assist local public bodies in complying with the Act.
- expand IPC’s communications strategy to include local public bodies.

The objectives of the office for 1999 are to:

- prepare for the final phase of local public bodies (municipalities and post-secondary academic institutions) coming under the Act.
- use privacy impact assessments (PIAs) to monitor and comment on the increasing number of information-related schemes and initiatives by government, particularly health-related initiatives.
- speak to Albertans about privacy issues and their implications for the individual by increasing the number of school presentations throughout the province.
- provide effective and timely reviews of the decisions of public bodies, which include universities and colleges, and municipalities respecting access requests and privacy complaints.
- participate extensively in the mandated three-year review of the Act.
- keep abreast of the continuing advances in information technology.
- to expand IPC’s communications strategy to include local public bodies by hiring a Research and Issues officer prior to post-secondary institutions and municipalities coming under the Act on September 1 and October 1, 1999, respectively.

Accomplishments

Interpretation of Legislation

Under the Act, the Commissioner is an officer of the Legislative Assembly and thereby independent from government. As such, one of the Commissioner's key responsibilities is to provide for independent reviews of decisions made by public bodies and the resolution of complaints under the Act. The following are some of the significant orders issued that help interpret the Act:

- Clarified a relationship between the *Child Welfare Act* and the *Freedom of Information and Protection of Privacy Act*. Established that a 1931 document from “home for unwed mothers” is subject to the Act.
— Order 98-007
- Clarified the relationship between public interest information and disclosure which would be harmful to business interests under the Act.
— Order 98-015
- Established it is not an unreasonable invasion of personal privacy to disclose personal information if the disclosure would reveal details of a licence, permit or similar “discretionary benefit.”
— Order 98-018
- Clarified the relationship between public interest disclosure and information which could harm the economic interest of the Government of Alberta.
— Order 98-019
- Interpreted the “continuing request” provisions of the *Freedom of Information and Protection of Privacy Act*.
— Order 97-019
- Decided what constitutes “responsive” information or record, and interpreted the “request for correction of personal information” provision of the *Freedom of Information and Protection of Privacy Act*.
— Order 97-020

Education and Public Relations

Under Section 51 of the Act, one of the Commissioner's responsibilities is to inform the public about the Act, as well as receive comments from the public concerning the administration of the Act. This is an important function to help Albertans understand their access and privacy rights under the legislation.

Many organizations or groups are looking for basic explanations and descriptions of the Act and the function of the Office of the Information and Privacy Commissioner (IPC). Other times, groups have specific questions or concerns with regard to the effect the Act has, or will have, on information management relative to specific sectors. The IPC is open to helping Albertans interpret the Act and to understand issues surrounding access to or privacy of information.

The following are some of the educational initiatives undertaken by the IPC over the past year:

- Participated in the Alberta FOIP '98 Conference. Speakers included the Commissioner, Director and General Counsel, and all Portfolio Officers.
- Participated in the Council On Governmental Ethics Laws (COGEL) annual conference in Seattle, Washington. The Commissioner represented the FOIP community on the COGEL Steering Committee.
- Addressed the Equifax Canada Seminar on the FOIP Act.
- Addressed the non-profit Out of School Care Centre's Board of Directors regarding freedom of information and protection of privacy.
- Gave school presentations to Grand Centre High School in Cold Lake and Lacombe High School on the topic of protecting one's privacy.

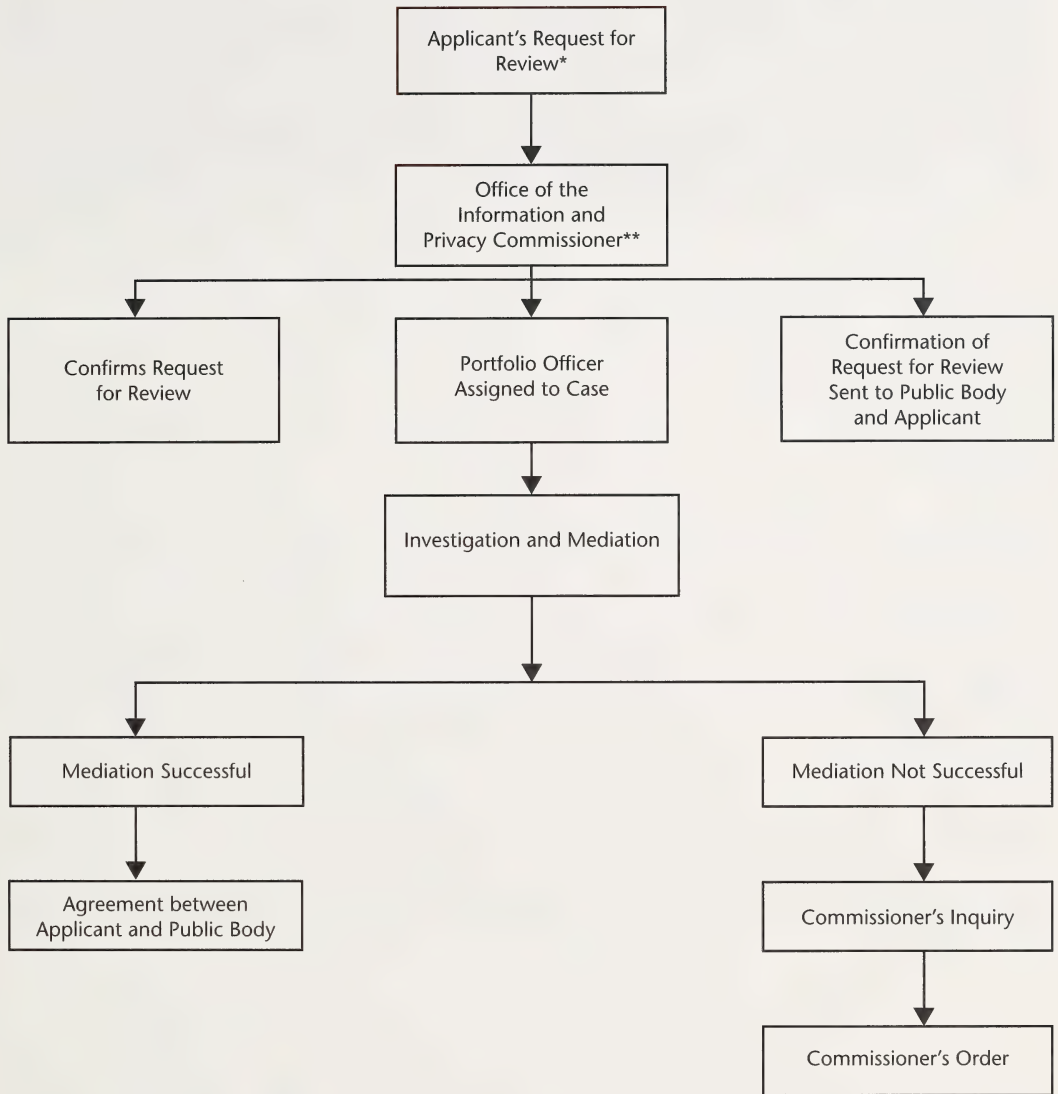
Some of the organizations the IPC addressed over the past year:

- The Institute of Public Administration of Canada, Edmonton Regional Group
- Calgary Regional Health Authority
- Mount Royal College
- Cross Cancer Institute
- Canadian Association of Chiefs of Police and Federal Correction Services Committee
- Northwest Inter-Agency Group (Symon's Valley United Church)
- City of Lethbridge
- Alberta Weekly Newspaper Association and Alberta School Boards
- Lloydminster Rotary Club
- New Horizon Charter School
- Alberta Federation of Labour
- Catholic Social Services
- Clergy at the Cross Cancer Institute
- Western Rehabilitation Specialists Inc.
- Medicine Hat: College of Alberta School Superintendents for Zone 6
- Medicine Hat High School
- Calgary: Police FOIP Network Meeting
- Grant MacEwan Community College: Presentation to journalism class
- Justice Staff College: Department of Justice
- University of Alberta Student Teachers
- United Nurses of Alberta

Some of the conferences and conventions the IPC addressed over the past year:

- Alberta Assessors' Association Annual Convention — 1998
- Canadian Information and Privacy Commissioners' Conference
- Annual Conference of Canadian Election Officials — 1998
- Council on Governmental Ethics Laws (COGEL) Conference
- Information and Privacy Commissioners' Fifth Annual Information and Privacy Conference entitled, "Private Lives and Public Accountability: Striking a Balance"
- Alberta Urban Municipalities Association (AUMA) Annual Convention & Trade Show
- RondPoint 1998 — Annual Provincial Francophone Conference
- Internet Insight 1999
- Metis Settlement, Appeal Tribunal

The Process: Request for Review and Inquiry



* Applicant: a person who makes a request for information held by a public body or a person who is affected by a public body's release of that information.

** The Commissioner is not involved with the Request for Review until the Inquiry stage.

A Retrospective — Statistical Information

Cases Opened (Listed by Case Type) October 1, 1995 to March 31, 1999

Type of Case	Relevant Section of Act	Cases Opened 1995 – 96	Cases Opened 1996 – 97	Cases Opened 1997 – 98	Cases Opened 1998 – 99
Requests for Review	s. 62	49	106	75	96
Complaints	s. 51(2)	15	42	31	41
Requests for Advice and Recommendation	s. 52	7	14	19	8
Requests for Fee Waiver	s. 87(4)	6	7	3	4
Requests to Extend Time	s. 13	2	7	9	3
Investigations	s. 51(1)(a)	1	3	–	3
Privacy Impact Assessments	s.36	–	–	–	4
Other	–	1	2	1	11
Total	–	81	182	138	170

Illustrates the number of cases (listed by case type) open with the Office of the Information and Privacy Commissioner from October 1, 1995 to March 31, 1999. The Office has opened 170 cases during the period of April 1, 1998 to March 31, 1999, compared with 138 in 1997 – 98. The table includes cases that were started prior to April 1, 1998.

Cases Opened (Listed by Public Body)

April 1, 1998 to March 31, 1999

Public Body	Requests for Review	Complaints	Advice and Recommendations	Privacy Impact Assessment	Other	Total
Alberta Energy and Utilities Board	1	1	–	–	–	2
Agriculture, Food, & Rural Development	–	–	–	–	2	2
Alberta Gaming and Liquor Commission	–	1	–	–	–	1
Alberta Insurance Council	1	–	–	–	–	1
Alberta Mental Health Board	–	1	–	–	–	1
Alberta Securities Commission	1	–	–	–	–	1
Alberta Treasury Branches	5	1	–	–	–	6
Aspen Regional Health Authority	1	1	–	–	–	2
Buffalo Trail Regional Division #28	–	1	–	–	–	1
Calgary Board of Education	2	1	–	–	–	3
Calgary Regional Health Authority	1	–	–	–	–	1
Caritas Group (RHA)	1	–	–	–	–	1
Community Development	–	1	–	–	–	1
Economic Development	1	1	–	–	–	2
Edmonton Catholic Regional Division	1	2	–	–	–	3
Edmonton Community PDD Board	1	–	–	–	–	1
Education	1	–	–	–	–	1
Energy	4	1	–	–	1	6
Environmental Protection	17	–	–	–	1	18
Executive Council	3	2	–	–	–	5
Family and Social Services	12	5	–	–	3	20
Foothills School Division #38	1	–	–	–	–	1
Grande Yellowhead Regional Division	–	1	–	–	–	1
Health	3	1	–	–	1	5
Justice	8	5	–	–	1	14
Labour	2	–	–	–	1	3
Labour Relations Board	1	–	–	–	–	1
Legislative Assembly Office	1	–	–	–	–	1
Municipal Affairs	–	–	–	–	1	1
Northern Lights School Division #69	–	1	–	–	–	1
Office of the Information and Privacy Commissioner*	–	–	8	4	8	20
Special Waste Management Corporation	1	–	–	–	–	1
Transportation and Utilities	3	–	–	–	1	4
Treasury	15	1	–	–	–	16
Workers' Compensation Board	8	12	–	–	1	21
Workers' Compensation Board of Appeal	–	1	–	–	–	1
Total	96	41	8	4	21	170

Illustrates the number of cases open with the Office of the Information and Privacy Commissioner, based on the particular public body and case type during the period of April 1, 1998 to March 31, 1999.

Note: * The Office of the information and Privacy Commissioner is the responding public body.
The Alberta Mental Health Board was previously known as the Provincial Mental Health Advisory Board.

Orders Issued

Public Body	Decisions Upheld	Decisions Partially Upheld	Decisions Overturned	Total Orders
Alberta Human Rights and Citizenship	–	1	–	1
Alberta Treasury Branches	1	–	–	1
Energy	–	1	–	1
Environmental Protection	4	–	1	5
Family and Social Services	1	2	2	5
Justice	2	–	–	2
Municipal Affairs	1	–	–	1
Office of the Premier/General Administration	1	–	–	1
Transportation and Utilities	–	–	1	1
Treasury	2	1	–	3
Workers' Compensation Board	–	1	1	2
Total	12	6	5	23

Illustrates the total number of Commissioner's Orders (listed by Public Body) issued during the period April 1, 1998 to March 31, 1999.

Results of Requests for Section 13 Time Extensions

(for requests received April 1, 1998 to March 31, 1999)

Approved: 3

Rejected: 0

Total 3

Illustrates the number of times the application of Section 13 of the Act was approved or rejected by the Commissioner.

Results of Requests for Fee Waiver, Made Under Section 87(4)

(for requests received April 1, 1998 to March 31, 1999)

Order issued, rejecting fee waiver: 1

Public body waived fee after mediation through Portfolio Officer: 2

Total 3

Illustrates the Results of Requests for Fee Waiver made under Section 87(4) of the Act.

Note: 1 case pertaining to a fee waiver request still remains open at the time the statistics were accumulated for the report.

Requests for Review: Cases Closed

Year	Concluded through Portfolio Officer	Concluded through Inquiry and Order	Total
1995 – 96	7	1	8
1996 – 97	79	16	95
1997 – 98	124(125)	22(21)	146
1998 – 99	57	23	80

Illustrates the number of Request for Review cases closed during the period April 1, 1998 to March 31, 1999. The table displays a comparison of the total number of cases closed for the three previous fiscal years and the fiscal year of this report. The table supports the fact that the majority of Request for Review cases are concluded through the mediation and investigation expertise of the Portfolio Officers and not through a formal inquiry proceeding.

Note: These statistics also include those cases opened before April 1, 1998, but concluded before March 31, 1999.

Cases Closed Between April 1, 1998 and March 31, 1999

Closing Method:	Requests for Review	Complaints	Requests for Advice/Direction	Request to Waive Fees	Request for Time Extension	Other	Total
Inquiry held and Order Issued	5	1	–	–	–	–	6
Orders Issued	17	–	–	–	–	–	17
Investigation Report	–	12	–	–	–	–	12
Answer provided	–	1	7	–	3	6	17
Information released after mediation	7	–	–	–	–	–	7
Other settlement reached after mediation	50	11	–	1	–	–	62
Case rejected: No jurisdiction	1	2	–	–	–	–	3
TOTAL	80	27	7	1	3	6	124

Illustrates the number of cases that were closed in the period April 1, 1998 to March 31, 1999. The statistics are listed by closing method and provides an analysis of how different case types issues are concluded. The Closing Method described as "Orders Issued" refers to Orders publicly released between April 1, 1998 and March 31, 1999, but whose associated case file was started prior to April 1, 1999.

Note: This table includes cases that were opened prior to April 1, 1998, but closed between April 1, 1998 and March 31, 1999.

Of cases started within the period April 1, 1998 to March 31, 1999, 46 cases remain open.

Of the cases closed within the period April 1, 1998 to March 31, 1999, 81.5% of cases are closed outside of a formal inquiry proceeding.

Inquiries Held and Orders Issued relates to cases whose inquiries were heard and their Orders issued in the period April 1, 1998 to March 31, 1999.

Orders Issued relates to cases whose Orders were issued in the period April 1, 1998 to March 31, 1999. These cases' inquiries may have been held prior to April 1, 1998.

Orders Issued (Comparison with Previous Years Distribution)

Public Body	1996 – 97	1997 – 98	1998 – 99
Alberta Health Facilities Review Committee	–	1	–
Alberta Human Rights and Citizenship	–	–	1
Alberta Treasury Branches	2	1	1
Community Development	–	1	–
Credit Union Deposit Guarantee Corporation	2	–	–
Energy	–	–	1
Environmental Protection	3	4	5
Family and Social Services	–	2	5
Federal & Intergovernmental Affairs	1	–	–
Health	1	1	–
Justice	5	4	2
Labour	–	1	–
Legislative Assembly Office	–	2	–
Municipal Affairs	2	1	1
Office of the Premier/General Administration	–	–	1
Public Works, Supply, and Services	–	1	–
Tire Recycling Management Board	2	–	–
Transportation and Utilities	–	1	–
Treasury	1	1	3
Workers' Compensation Board	–	1	2
Total	17	22 (21)	23

Illustrates a comparison between the number of Orders issued by the Commissioner in previous fiscal periods and those issued by the Commissioner in the fiscal period April 1, 1998 and March 31, 1999.

Results of Portfolio Officers' Investigations/Investigation Reports of Complaint, Cases Opened April 1, 1998 to March 31, 1999

Basis for Complaint	Number of Complaints Substantiated	Number of Complaints Substantiated	Number of Complaint NOT Cases Still Open	Total
Breach of Privacy	6	7	15	28
Failure to Fulfill Duties Under the Act (sec.9)	2	1	0	3
Other	0	10	0	10
Total:	8	18	15	41

Time Taken by Office of the Information and Privacy Commissioner to Process Cases, (for Cases Opened and Closed Between April 1, 1998 and March 31, 1999)

Type of Case	1 Day Days	2 – 10 Days	11 – 30 Days	31 – 90 Days	3 – 6 Months	Over 6 Months	Total
Requests for Review	–	1	5	16	13	11	46
Complaints	–	–	3	6	4	4	17
Requests for Advice	–	1	1	–	2	1	5
Investigation Generated by Commissioner	–	–	–	1	–	–	1
Requests to Extend Time	1	1	1	–	–	–	3
Request for Information (RFI)	–	1	–	–	–	–	1
Research Proposal Agreement (RPA)	–	–	1	–	–	–	1
Comment of Schemes and Programs	1	–	–	–	1	–	2
Other	1	–	–	–	–	–	1
Total	3	4	11	23	20	16	77

Note: Of the cases opened and closed between April 1, 1998 and March 31, 1999, 53% of cases are closed within three months; 76% are closed within 6 months.

Duty to Warn, and Public Interest Override (Section 31)

Section 31 places a duty on public bodies to warn the public of the risk of certain harms. When performing that duty, the head is empowered to disclose personal information about third parties to the extent that the disclosure is necessary. This “public interest override” also extends to situations of information disclosure that are clearly in the public interest. The duty to warn rests on the head whether or not there is an access request for the information. Where practicable, the head gives notice to the third party that the disclosure will be made. Otherwise, the head notifies the third party that the disclosure was made. The head notifies the Commissioner of every instance where third-party information is disclosed under Section 31.

Third-party information is sometimes disclosed when a public body determines that it is clearly in the public interest to release a report to the public, and that report happens to contain personal information about individuals.

In other cases, the personal information of an individual is purposely compiled for disclosure because the presence of that individual is held to be a risk of harm to public safety. The Minister of Justice has delegated the function of giving public warnings to the chiefs of police in Alberta. The chiefs exercise that responsibility with the assistance of a detailed protocol. Such was the case when the Lethbridge Police Service issued a media release warning the public of an impending move of a released sex offender to the city. In 1997 – 98, law enforcement agencies notified the Commissioner of 17 cases where public warnings were given. In 1998 – 99, 17 police warnings were issued. By agency and type of public warned, the 17 issued police warnings for 1998 – 99 were as follows:

	Disclosure to Victims and Relatives	Full Public Disclosure Through Media	Total
Calgary Police Service:	0	2	2
Edmonton Police Service:	8	2	10
RCMP:	1	1	2
Other:	2	1	3
Totals:	11	6	17

Summaries: Selected Inquiries, Orders, Judicial Reviews (Released Between April 1, 1998 and March 31, 1999)

Child Welfare Act Records (Order 98-007)

The Applicant made a request under the *Freedom of Information and Protection of Privacy Act* (the Act) requesting access to all records held by the Department of Family and Social Services (the Public Body) concerning the Applicant's mother's time in the care of child welfare authorities. The Applicant's mother was born in 1931 and adopted in 1934. The Public Body found one record, a one-page intake sheet recording the particulars of the Applicant's mother's birth prepared by the institution that served as a "home for unwed mothers." The Public Body denied the Applicant access to the names of the birth parents, the name and address of a third party and information concerning the birth place of the birth mother under section 5(2) of the Act.

The Public Body argued that under section 5(2) of the Act, sections 66(6) and 66(8) of the *Child Welfare Act*, which are provisions dealing with the disclosure of adoption information, prevailed over the access provisions of the Act with respect to the release of the information. In addition, the Public Body argued that all of the information it severed from the record was not releasable under section 16(1) of the Act.

The Commissioner held that the Public Body had incorrectly applied section 5(2) of the Act. He determined that the noted sections of the *Child Welfare Act* were applicable in cases concerning requests for documents that relate to an adoption. The record in this case did not relate to an adoption. Therefore, the Commissioner ruled that section 5(2) did not operate in this case to remove the Applicant's access request from the purview of the Act.

However, the Commissioner held that the Public Body had correctly applied section 16 of the Act when it refused to disclose the personal

information in question. He determined that the disclosure could, conceivably, harm the birth parents' present-day familial relationships, or, if the parents were no longer living, damage their reputations. The Commissioner, therefore, upheld the Public Body's decision to refuse access to the personal information requested.

Public Interest Information vs. Business Information (Order 98-015)

The Applicant applied to Alberta Treasury (the Public Body) requesting access to all independent valuations and/or fairness assessments regarding the Government of Alberta's financial interests in the Al-Pac Pulp Mill project.

Alberta Treasury disclosed 238 of 309 records to the Applicant, and noted that the records or information withheld would reveal confidential financial or commercial information (section 15(1) of the Act) of the Al-Pac Joint Venture (the Third Party). The Applicant argued that the records should be disclosed because they contained information that related to a non-arm's length loan transaction between the Government of Alberta and the Third Party, and the public interest required that the records be disclosed.

The Commissioner upheld the Public Body's decision to refuse to disclose the following information: financial and commercial information supplied by the Third Party to the Public Body, and forecasts and estimates based on the information supplied by the Third Party.

The Commissioner was of the view that the information would not only reveal the Third Party's financial and commercial information, but would allow the Applicant to make accurate inferences about the Third Party's sensitive business information. He held that the disclosure would harm significantly the competitive position or interfere significantly with the negotiating position of the Third Party. However, the Commissioner ordered the Public Body to disclose information about the published price of pulp in US dollars, the

published price of pulp in Canadian dollars, and the \$Cdn/\$US exchange rate.

In addition, the Commissioner was of the view that the loan transaction between the Government of Alberta and the Third Party was an arm's length transaction because the parties were not related, they were acting in their own interests, and they did not exert control or influence over the other in the process of negotiating the loan.

Disclosure of Names Related to Hunting Licences (Order 98-018)

The Applicant applied to Alberta Environmental Protection (the Public Body) for access to the names of Alberta residents who received a licence to hunt grizzly bears in Alberta during the 1998 hunting season.

The Public Body provided access to the names of three individuals who consented to disclosure of their names, but refused access to the names of 148 other individuals (the Third Parties) on the ground that the disclosure of the third parties' names would be an unreasonable invasion of their personal privacy (section 16 of the Act).

The Applicant said the disclosure would not be an unreasonable invasion of personal privacy because the disclosure would reveal details of a licence, permit or other similar discretionary benefit, as provided by section 16(4)(g) of the Act.

The Commissioner agreed with the Applicant. He noted that it is not an unreasonable invasion of personal privacy to disclose personal information if the disclosure would reveal details of a licence, permit or other similar discretionary benefit granted to a third party by a public body. The Commissioner found that, because of the way grizzly bear licences are awarded and administered, they are "discretionary benefits."

As the names would reveal the details of the discretionary benefits (licences), the Commissioner ordered the Public Body to disclose the 148 names.

Public Interest Disclosure (Order 98-019)

The Applicant applied to Alberta Treasury (the Public Body) for access to copies of all studies and reports prepared by or for the Ministry of Treasury and the Alberta Treasury Branches between January 1, 1993 and December 22, 1997, assessing the feasibility of privatizing or selling the assets and liabilities of the Alberta Treasury Branches (the ATB).

The Public Body refused to disclose a portion of the records, on the grounds that disclosure could harm the economic interests of the Government of Alberta or the ATB under section 24(1)(c) of the Act.

The Commissioner decided that the records did fall under the Act, but found that the head of the Public Body reasonably decided that disclosure of the records could result in financial loss or prejudice the competitive position of the Government of Alberta or the ATB. It should be noted that it is not necessary to find that loss or prejudice will occur under section 24(1)(c), merely that there is a reasonable possibility that such a loss or prejudice could occur.

"Continuing Request" Provisions (Order 97-019)

The Applicants had requested access to Alberta Environmental Protection (the Public Body) under the *Freedom of Information and Protection of Privacy Act* (the Act). The Applicants had applied to lease public lands and sought records pertaining to their application. The Applicants had also asked that their request for access be a "continuing request" for a period of two years, as provided under section 8(2) of the Act. Under a "continuing request," a Public Body must provide an applicant with a schedule of dates on which the applicant's request is automatically reactivated, so that an applicant does not have to make a new request on each of the scheduled dates.

The Applicants received the first delivery of records, but complained to the Public Body that a number of specific records were missing. The Commissioner's Office conducted an

investigation, reported to the Applicants, and closed the file. The Applicants complained that the file should not have been closed and asked the Commissioner to conduct an inquiry focusing on four issues: whether the Public Body was correct in severing personal information, whether the Public Body met its duty to assist the Applicants, whether the Public Body failed to provide an estimate of the total fees payable over the course of the continuing request, and whether the Commissioner's Office followed proper procedure when it did not proceed under section 10(2) of the Act.

The Commissioner held that the Public Body correctly severed personal information. He also held that the Public Body met its duty to assist the Applicants. As to the main issue, the Commissioner decided that the Act and the Regulations to the Act required that a public body give an applicant an estimate of the total fees payable over the course of a continuing request. The Public Body had not done so. The Commissioner also gave directions about how a public body should prepare a fee estimate for a continuing request. Finally, the Commissioner decided that his Office followed proper procedure by not treating the Public Body's inability to find the missing records as a decision to refuse access. However, the Commissioner decided that the Applicant's file should not have been closed, because under section 66(1) of the Act, the Commissioner must conduct an inquiry when matters of a request for review are not settled by mediation.

The matter was remedied by the Commissioner's Office opening a new file and conducting an inquiry.

Interpreting the "Request for Correction of Personal Information" Provision (Order 97-020)

The Applicant had applied for access to the Applicant's personal information and to the personal information of the Applicant's agent, concerning the investigation of Alberta Human Rights and Citizenship Commission's (the Public

Body) into the Applicant's complaint. The Public Body had dismissed the Applicant's discrimination complaint.

The Public Body provided records to the Applicant, but removed information from some of the records on the grounds that the information was "non-responsive" to the Applicant's request. The Public Body did not apply any exceptions under the Act when it removed the information.

To decide whether information or a record is responsive, the Commissioner said that a public body must examine an applicant's request. In this case, the Public Body took too narrow a view of the Applicant's request. Many of the records were responsive, and not just the information contained in those records. The Commissioner said that the removal of non-responsive information is not "severing."

The Commissioner ordered the Public Body to review the records that he found to be responsive, and sever them according to any applicable exceptions under the Act.

The Applicant also asked the Public Body to correct some personal information in the records (section 35(1) of the Act). Instead, the Public Body decided to "link" the information with the correction that was requested.

The Commissioner found that, as the Applicant's personal information consisted of the kinds of personal information that were not able to be corrected, the Public Body exercised its discretion properly in not correcting that personal information.

The Commissioner also set out three factors that a public body must consider when deciding how to correct an applicant's personal information, and adopted two standards for correction.

The Commissioner further decided that the Public Body's decision to "link" was appropriate, but the method of linking was not appropriate.

The Commissioner set out four factors to consider when deciding on a fair way to annotate or link, and adopted three standards for annotating or linking.

Summaries: Selected Reviews, Complaints, Investigations, Audits

Status Report on Privacy Compliance Audit of Motor Vehicles Registry

In 1998, IPC and the Office of the Auditor General jointly conducted an audit of Alberta Registries.

Alberta Registries proceeded immediately with 16 of the 21 recommendations contained in the audit report. Some of these recommendations have been finalized, such as training of registries staff on implications of the Act to registry services delivery, and review of forms to ensure that only current forms are used and that the forms contain the appropriate notification statements in accordance with the requirements of the Act. Work continues on other recommendations, such as development of publications for the public, and communicating Alberta Registries' purpose and authority for collection of personal information.

Alberta Registries accepted the remaining five recommendations in principle. Given the significant implications relating to the implementation of the remaining five recommendations, Alberta Registries decided it would consult with its stakeholders and Albertans before taking action on those recommendations.

Consultation with stakeholders was completed, and a Stakeholders' Consultation Report was released in February 1999 to stakeholders for comment/input. Alberta Registries is currently reviewing stakeholder feedback.

The collection of personal information for the Motor Vehicles Registry is subject to the Act; however, the use and disclosure of that personal information is not subject to the provisions of the Act. The Commissioner is pleased that Alberta Registries has chosen to comply with the spirit and intent of the Act in its handling of personal information in the Motor Vehicles Registry.

Investigations

Portfolio Officer's investigation into a complaint resulted in Alberta Health re-examining its collection practices.

The Office of the Information and Privacy Commissioner received a complaint from a woman who had been sent a letter from *Screen Test: Alberta Program for the Early Detection of Breast Cancer*. The Portfolio Officer assigned to the case discovered that personal data had been provided by Alberta Health as part of an information sharing agreement with the Alberta Cancer Board, and found that no breach of the *Freedom of Information and Protection of Privacy Act* had occurred.

Subsequently, the investigation noted that the collection of social insurance numbers by Alberta Health was not in accordance with the Act. The collection was not expressly authorized by legislation and was not necessary for the administration of the Health Care Insurance Plan. The Commissioner recommended that Alberta Health discontinue its collection of social insurance numbers immediately. Alberta Health had initially expressed concerns with the Commissioner's recommendation, resulting in the Commissioner's plan to hold a hearing on the issue.

However, Alberta Health reconsidered its decision and notified the Commissioner that it would comply with all of the investigation report's recommendations. The Commissioner commended Alberta Health for taking the initiative in following the intent and spirit of the Act.

This case shows that complaints to the Commissioner can result in public bodies re-examining their collection practices, to ensure that public bodies only collect personal information that is authorized by legislation or is necessary for an operating program.

Portfolio Officer's investigation into a complaint resulted in the WCB changing its disclosure practices.

The Officer of the Information and Privacy Commissioner received a complaint from an individual that their personal information had been disclosed by the Workers' Compensation Board (WCB). The individual indicated the WCB breached their privacy by disclosing information relating to their WCB claim, including correspondence and medical information, to parties named as defendants by them in a civil lawsuit.

The Portfolio Officer's investigation found that the WCB did not have the authority to disclose the individual's personal information to various parties, violating Part 2 of the FOIP Act.

The investigator disagreed with the WCB's interpretation of "interested parties," and recommended that the WCB reconsider its position. The WCB accepted the investigation's recommendations.

This case demonstrates that complaints to the Commissioner can result in changes to disclosure practices of public bodies, to minimize the privacy risks to individuals.

Release of Records from Alberta Health

An applicant had requested access to records that indicated the amount paid for health care premiums over a specific period of time. Access was not granted by Alberta Health (the Public Body) and the individual asked our office to review the decision.

The Applicant was concerned that, even though an employee of the department was able to read information to the Applicant from a computer screen, access to the specific record was not forthcoming.

During the review process, it was learned that printouts of certain payments could indeed be printed with some severing of personal information about third parties.

The Applicant received this information from the department, which satisfied the Applicant's concerns.

Investigation concludes that the Lethbridge Police Service was justified in releasing personal information about a sex offender through the media

A complaint was lodged with the Office of the Information and Privacy Commissioner by an individual that the Lethbridge Police Service had disclosed their personal information. The Complainant had a record for sexual assault and was in the process of moving to Lethbridge. The Chief of Police issued a media release warning the public of their impending move to the city, citing section 31 of the Act. Section 31 places a duty on the head of a public body to release information about a risk of significant harm to the health or safety of the public, a group of people or to a person.

The investigation concluded that the decision of the Chief of Police to make the release was "rationally defensible." In referring to the review, the Commissioner stated, "I will be concerned with whether the head's decision is rationally defensible, as opposed to whether I think he decided correctly."

The investigation also concluded that the Lethbridge Police Service should not have released the Complainant's home address. The release of the address resulted in consequences to people other than the Complainant, including their parents and neighbours. The investigation concluded that it is necessary to consider the harm to others when a disclosure decision is contemplated. It is also important to ensure that the disclosure is done in the least intrusive manner that will accomplish the necessary results.

Municipal police services do not currently fall under the Act. They will come under the legislation on October 1, 1999, when the Act will also apply to municipalities in Alberta. The investigation looked at the protocol currently in place. This is the first time the Office of the Information and Privacy Commissioner has received a complaint in which protocol was involved.

Summaries: Advice, Recommendations and Analysis of Issues

Federal Privacy Legislation Bill C-54 (now Bill C-6)

In November 1998, the Commissioner's Office informed the Select Special Freedom of Information and Protection of Privacy Act Review Committee about developments at the federal level regarding private sector privacy protection.

The federal privacy bill, the *Personal Information Protection and Electronic Documents Act*, Bill C-54, passed third reading in the House of Commons. Bill C-54 will have a major impact on the safeguarding of personal information of Albertans in the private sector. According to Industry Canada, the main purpose of the bill is to establish Canadians' trust in the way which businesses collect, use and disclose personal information, for the purposes of developing electronic commerce.

The introduction of Bill C-54, was in response to the 1995 European Union's Data Protection Directive protecting personal information and harmonizing privacy laws among member states.

Under Bill C-54, protection of personal information will first apply to the federally-regulated private sector, including telecommunications, broadcasting, banking, and inter-provincial transportation. It will also apply to federal Crown corporations operating in these areas: Atomic Energy of Canada Limited, the CBC, the various Ports Corporations, and Via Rail.

Three years after coming into force, the provisions will apply more broadly to all personal information collected, used or disclosed in the course of commercial activities. At this time, the federal legislation will apply to all Alberta businesses such as travel agencies, grocery stores, video rental stores and credit unions. IPC noted, however, that if Alberta adopts similar legislation covering the private sector, Alberta may be exempted from Bill C-54.

IPC noted that a number of concerns were raised regarding Bill C-54. Primarily, it is unclear whether the federal government has the jurisdiction to legislate for Alberta businesses that do not trade inter-provincially or internationally. It is also unclear who will be in charge of administering Bill C-54.

Bill C-54 did not pass before Parliament prorogued the spring session. Bill C-54 reappeared on the order paper as Bill C-6 when the fall session of Parliament resumed.

Proposed Health Information Legislation

Over the past year, the Commissioner has submitted comments to Alberta Health and Wellness on the proposed Alberta health information legislation. Section 51(1)(f) of the Act allows the Commissioner to comment on the implications for protection of privacy of proposed legislative schemes of public bodies.

The Commissioner outlined four major concerns he wanted addressed before the final draft of the legislation was debated in the Alberta Legislature. First, the Commissioner wanted Albertans to have the option of "opting out" of any future accessible electronic network or electronic database that would contain any personal health information. Second, he felt that to ensure transparency, specific regulations found in the legislation must undergo public scrutiny before their enactment. Third, the Commissioner proposed that the Government of Alberta or the Department of Health and Wellness explain to Albertans, through a series of public consultations, the implications of allowing their personal health information to be legislated in this manner.

Finally, the Commissioner also expressed concern that the legislation does not extend to the private sector. He hoped that a statutory three-year review of the legislation would contain specific reference to consider including the private sector. The legislation is expected to be introduced in the Fall 1999 Session of the Alberta Legislature.

Three-Year Review of the FOIP Act

A central focus of 1998 – 99 activity was the Legislative Assembly's three-year review of the FOIP Act. This review, conducted by the all-party Select Special FOIP Act Review Committee chaired by Mr. Gary Friedel, MLA (Peace River), was required by Section 91 of the original 1994 Act.

Privacy protection and access rights are very fast moving issues, and governing legislation only has value if it is consciously kept up to date. It was gratifying to see the vigour and discipline with which the Members approached this review. The breadth of input and the depth of arguments from citizens, organizations and public bodies was an encouraging sign of growing public awareness and interest.

My Office seconded a Portfolio officer to serve the Committee as an expert resource, and provided one of our Staff Legal Counsel to serve as an emissary from the Commissioner in the interests of achieving principled, workable statutory improvements. I was pleased to have the opportunity to make submissions on my own recommendations, and the chance to comment on submissions made by other contributors.

The review began with the appointment of the Committee in March 1998 and concluded with the presentation of the Final report in March 1999. While the published report of the Committee was strong endorsement for the principles and framework of the original 1994 legislation, it did grapple with the contradictions and inconsistencies of the Act to produce 81 clear-cut recommendations for changes and 28 recommendations to support no-change in some contested topics.

The non-partisan spirit of the review was respected in the Government's drafting of Bill 37, the Freedom of Information and Protection of Privacy Amendment Act, 1999, and was reflected by the Assembly in the smooth passage of the Bill into law during April and May 1999. A law derived from other laws in other jurisdictions now carries a distinctive made-in-Alberta character, a result of competent law-making envied by other jurisdictions.

Financial Statement

Due to time constraints, the final audited financial statement for the Office of the Information and Privacy Commissioner will be available after November 30, 1999.

Appendix

Definitions

The following is a list of meanings of terms or abbreviations that are used throughout this Manual. Additional definitions can be found in section 1 of the Freedom of Information and Protection of Privacy Act.

the Act means the Freedom of Information and Protection of Privacy Act.

affected person means a person whose interests are so affected by the outcome of the request for review, that the Commissioner deems the person should have the same rights during the inquiry as the person who requested the review and the public body.

applicant means the person who made a request for access from a public body or whose information is affected by the public body's actions.

Commissioner means the Information and Privacy Commissioner.

complainant means a person who makes a formal request that the IPC investigate a public body on one of the grounds listed in section 51(2) or 68(3).

confidential information means information which should not be available to the public.

disclosure means the act of providing access to records or information.

FOIP Coordinator means the person delegated by the head of a public body to deal with matters related to the Freedom of Information and Protection of Privacy Act.

head of public body means the minister of a government office, department, or branch, the chief executive officer, or someone else designated to preside over the public body.

inquiry means a quasi-judicial process where the Commissioner decides issues of fact and law to resolve a review or complaint, which results in an Order being issued.

intervenor means a person, group or organization that does not have status under the Act, but has an interest in an issue being decided at an inquiry and is invited by the Commissioner to make a submission or present evidence.

investigation means the procedure for responding to complaints under section 51(2), for monitoring compliance with the Act under section 51(1)(a), and for whistle blower's disclosures under section 77.

Investigation Report means the document written to summarize the findings of an investigation.

IPC means the Office of the Information and Privacy Commissioner and its staff.

judicial review means an application made to the Court of Queen's Bench of Alberta for review of a Commissioner's Order.

mediation means the process of facilitating discussion between parties with the goal of negotiating a mutually accepted resolution of the dispute.

Order means a binding decision made by the Commissioner.

person means an individual, a corporation, or any other entity.

public body means a body defined by the Act.

record means recorded information in any form, including books, documents, maps, drawings, photographs, letters, vouchers, and papers.

review means the procedure described in Part 4 of the Act, followed by the IPC upon receiving a request for review.

third party means a person other than the applicant or public body, whose interests are affected by the public body's decision, as described in section 15 or 16 of the Act.

whistleblower means an employee of a public body who is notifying the Commissioner, in confidence, of some act or practice of the public body.

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